

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE ENROLLED ACT No. 1758

AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 30-2-13-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. **(a) Except as provided in subsection (b), this chapter applies to any written agreement between a purchaser and a seller that obligates the seller to provide prepaid services or merchandise, or both, for a named individual in conjunction with the death, funeral, burial, or final disposition of the individual.**

~~(a)~~ **(b)** Except as provided in subsections ~~(b)~~ **(c)** and ~~(c)~~ **(d)**, this chapter does not apply to the following:

(1) Perpetual care funds under IC 23-14-1.

(2) The sale of burial rights. However, this chapter applies to the sale of services or merchandise sold in conjunction with the sale of burial rights and to the use of free or discounted burial rights as an inducement for a purchaser to transfer sellers.

(3) A contract between a purchaser and a seller that requires delivery of prepaid services or merchandise, or both, not later than one (1) year after the date of final payment and for circumstances other than death.

~~(b)~~ **(c)** The annual reporting requirements of section 31 of this chapter apply to a perpetual care fund.

~~(c)~~ **(d)** The solicitation requirements of section 24 of this chapter and the provisions concerning inducement in section 13(h) of this

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chapter apply to the sale of burial rights.

SECTION 2. IC 30-2-13-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. As used in this chapter, "delivery" means the time when:

(1) services are performed in connection with the funeral or other disposition of the purchaser or the individual for whom services are to be provided under the contract; ~~or~~

(2) **except for merchandise described in section 8(1)(A) and 8(1)(C) of this chapter, the** merchandise is:

(A) in the possession of the purchaser or used for the intended purpose of the merchandise; or

(B) permanently installed on or in cemetery property, the burial rights to which have been transferred or granted to the purchaser or individual for whose interment the merchandise is to be used; or

(3) except for merchandise described in section 8(1)(A) and 8(1)(C) of this chapter, the merchandise is:

(A) **purchased by the seller and** stored in manufactured form, in a manner and number equal to all merchandise sold, on the premises where the merchandise is to be used or installed and specifically identified in the name of the purchaser, although any applicable installation or final finishing fees remain subject to the terms of the contract made under this chapter; or
(B) permanently identified with the name of the purchaser or individual for whom the merchandise is to be provided and delivered to a warehouse, with both title to the merchandise and a warehouse receipt delivered to the purchaser, and notification to and acceptance of delivery acknowledged in writing by the purchaser.

SECTION 3. IC 30-2-13-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. As used in this chapter, "prepaid services or merchandise" or "services or merchandise" includes personal property or services:

(1) typically sold or provided in connection with the final disposition or memorialization of human remains, including:

(A) caskets or other primary containers, including rental, temporary, or disposable caskets or containers;

(B) outer burial containers;

(C) cremation or transportation containers;

(D) funeral clothing or accessories;

(E) monuments;

(F) grave markers;



- (G) cremation urns;
- (H) embalming services;
- (I) funeral directing services provided at the time of death and in connection with the final disposition of human remains;
- (J) ~~opening and closing fees~~;
- ~~(K)~~ final date carving fees, including carving fees for double monuments;
- ~~(L)~~ (K) cremation;
- ~~(M)~~ (L) cremation services; ~~and~~
- ~~(N)~~ (M) other funeral and burial items, including items of service or merchandise that may be rented or leased; and
- (N) services or merchandise otherwise described as cash advance items under section 11.5 of this chapter and sold directly by the seller and not provided by a third person; and**

(2) purchased in advance of need to be provided or delivered after the death of the ~~individual named~~ **purchaser or individual for whom services or merchandise are to be provided** in the contract.

SECTION 4. IC 30-2-13-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) Except as provided in subsection (b), as used in this chapter, "purchaser" means a person or firm contracting with a seller for services or merchandise to be provided or delivered for a named individual.

(b) As used in section 13(b) of this chapter, "purchaser" means:

- (1) an individual described in subsection (a);
- (2) the attorney in fact, appointed under IC 30-5, of an individual described in subsection (a);
- (3) the guardian, appointed under IC 29-3, of an individual described in subsection (a); or
- (4) if an individual described in subsection (a) is deceased:
 - (A) the surviving spouse of the individual;
 - (B) if there is no surviving spouse, the adult children of the individual; ~~or~~
 - (C) if there is no surviving spouse or surviving adult child, the surviving parent or parents of the individual; or**
 - ~~(D)~~ **(D)** if there is neither a surviving spouse nor adult children, **nor a surviving parent**, the personal representative (as defined in IC 29-1-1-3) of the individual.

SECTION 5. IC 30-2-13-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. As used in this chapter, "seller" means a person **doing business as a sole proprietor**,



a firm, a limited liability company, a corporation, an association, or a partnership contracting to provide services or merchandise, or both, to a named individual. ~~or contracting to provide or sell both a contract and a funding mechanism to be used in conjunction with the purchase of services or merchandise.~~

SECTION 6. IC 30-2-13-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. (a) As used in this chapter, "trustee" **or "escrow agent, acting as a fiduciary"**, means a:

- (1) bank;
- (2) trust company;
- (3) savings association; or
- (4) credit union;

that maintains an office in Indiana and is qualified under state or federal law to serve as a trustee **or escrow agent, acting as a fiduciary.**

(b) For a contract using a life insurance policy as consideration, the term also includes a life insurance company **or other entity** that establishes a trust for the purposes of holding and administering life insurance policies ~~and annuity contracts~~ issued by ~~the~~ **an insurance** company to fund contracts under this chapter. **Notwithstanding any other law to the contrary, a life insurance company or other entity acting as a trustee shall comply with this chapter.**

(c) **For a contract using a previously issued life insurance policy as consideration, the seller is considered to be a qualified trustee if ownership is irrevocably assigned to the seller in conjunction with an assignment of death benefits.**

SECTION 7. IC 30-2-13-11.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11.5. (a) As used in this chapter, "cash advance item" means an item of property, or services, or merchandise that is not sold directly by a seller and is described to a purchaser as one (1) of the following:

- (1) A cash advance.
- (2) An accommodation.
- (3) A cash disbursement.
- (4) An estimated future charge by a third party.
- (5) A similar term.

(b) The term also refers to a service or property obtained from a third party for which the seller collects an estimated payment to be held in trust or escrow until services or merchandise subject to a contract are delivered because the cost of the service or property can only be estimated at the time the contract is made.



(c) Cash advance items include the following:

- (1) Cemetery or crematory services.**
- (2) Pallbearers.**
- (3) Public transportation.**
- (4) Clergy honoraria.**
- (5) Flowers.**
- (6) Musicians or singers.**
- (7) Nurses.**
- (8) Obituary notices.**
- (9) Gratuities.**
- (10) Death Certificates.**
- (11) Sales tax.**
- (12) Foreign language interpreters.**
- (13) Religious commemorative services.**
- (14) Fees charged for the following:**
 - (A) Interment.**
 - (B) Opening and closing of a grave or crypt.**

(d) If property or services are not cash advance items under this section, they are services or merchandise under section 8 of this chapter.

SECTION 8. IC 30-2-13-12.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12.1. (a) This section applies to contracts for prepaid services or merchandise, or both, entered into under this chapter after December 31, 1995, **and before July 1, 1999.**

(b) A purchaser may enter into more than one (1) contract under this chapter for prepaid services or merchandise, or both. Each contract may be funded with cash, either in a lump sum or installment payments, or an insurance policy, or both. The purchaser may revoke the contract if the purchaser sends the seller written notice of the revocation within thirty (30) days after the contract is signed by the purchaser and seller. If a purchaser revokes a contract, the seller shall refund to the purchaser, without interest, all property used to fund the contract. If the seller receives payment of at least five hundred dollars (\$500) in cash that must ultimately be placed in trust or escrow under this section, the seller shall, not more than five (5) days after receiving the payment, deposit the payment in escrow pending irrevocable deposit to trust or escrow authorized by either subsection (h) or (i). Thirty (30) days after the contract is signed all property paid or delivered to the seller to fund each contract shall be irrevocably deposited by the seller to trust or escrow authorized by either subsection (h) or (i). Except for installment contracts funded with cash



and contracts funded with a newly issued insurance policy that has a limited or qualified death benefit period, all sellers shall guarantee the provision of all services and merchandise sold under a contract authorized by this chapter. At delivery, a seller may not impose additional charges to recover a difference between the original contract retail prices or current retail prices for services and merchandise that are sold under the contract, whichever is greater, and the amount on deposit in trust or escrow.

(c) If a contract under this chapter is funded with an insurance policy, the ownership of the insurance policy must be irrevocably assigned to a trustee. The seller may not borrow against, pledge, withdraw, or impair the cash value of the policy.

(d) A finance charge may be assessed on a contract sold on an installment basis, and the seller shall disclose to the purchaser all the applicable requirements under federal and state law.

(e) A seller or successor seller who has accepted cash or an insurance policy, or both as full payment of a contract under subsection (b) is responsible for providing all contracted prepaid services and merchandise if the insurance company or trust company used to fund the contract is insolvent.

(f) A purchaser who purchases a contract with cash or through an insurance contract shall make the payment for the contract payable only to the seller or insurer, respectively.

(g) A seller may not accept or deposit to trust or escrow cash, an insurance policy, or any other property as consideration for services or merchandise to be provided in the future except in connection with a contract authorized by this chapter.

(h) A trust account authorized and established under this chapter must:

- (1) be irrevocable and require the seller to deposit to trust all sums or property received from the purchaser;
- (2) designate the seller as settlor and the seller as beneficiary;
- (3) designate a trustee qualified under this chapter and authorize the trustee to charge a reasonable fee for services;
- (4) require that a separate account be maintained in the name of each purchaser;
- (5) require that interest earned on the account be added to the principal and reinvested;
- (6) permit assets of the separate accounts of several purchasers to be commingled for investment; and
- (7) require that on delivery of services or merchandise the trustee shall remit to the seller the amount on deposit in the purchaser's



trust.

Upon full delivery of all services and merchandise under the contract, if the amount on deposit in the trust is greater than the seller's total current retail price of all services and merchandise under the contract, the remaining amount may but need not be returned to the individual, if any, designated by the purchaser to receive the remainder, or to the purchaser's estate.

(i) An escrow account authorized and established under this chapter must:

- (1) be irrevocable and require the seller to deposit to escrow all sums or property received from the purchaser;
- (2) designate the seller as settlor and beneficiary;
- (3) designate a trustee qualified under this chapter and authorize the trustee to charge a reasonable fee for services;
- (4) require that the escrow account be maintained in the name of the seller and serve as a depository for all cash or other property received by the seller to fund contracts sold by the seller;
- (5) permit the commingling of cash for investment;
- (6) permit the seller to withdraw from the escrow account the current retail value of prepaid services or merchandise delivered under this chapter; and
- (7) permit any interest earned or appreciation in value of money or other property deposited in escrow to be paid to the seller not more frequently than monthly, to the extent that the total value of the escrow account after a payment under this subdivision is not less than the current retail value of all services and merchandise under the contracts that remain undelivered.

(j) A trust account or an escrow account established under this chapter:

- (1) must include the provisions set forth in either subsection (h) or (i);
- (2) may be included as an integral part of a seller's contract through the execution of an adoption agreement that references the trust account or escrow account; and
- (3) is not required to be represented by a separate trust or escrow document for each contract.

(k) The entire value of an irrevocable trust or an escrow established under this chapter may not be considered as a resource in determining a person's eligibility for Medicaid under IC 12-15-2-17.

(l) A contract for prepaid services or merchandise, or both, entered into after June 30, 1997, must contain a statement that:

- (1) the purchaser may revoke the contract under subsection (b)

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within thirty (30) days after the contract is signed; and

(2) after thirty (30) days, the contract is irrevocable.

(m) This chapter does not prohibit a purchaser from immediately making the trust or escrow required under this chapter irrevocable and assigning ownership of an insurance policy used to fund a contract to obtain favorable consideration for Medicaid, Supplemental Security Income, or another public assistance program under federal or state law.

SECTION 9. IC 30-2-13-12.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 12.5. (a) This section applies to the following contracts entered into or established under this chapter after June 30, 1999:**

(1) Contracts for prepaid services.

(2) Contracts for prepaid merchandise.

(3) Trusts or escrows established to hold consideration paid for services or merchandise subject to a contract entered into under this chapter.

(b) A contract between a purchaser and a seller must:

(1) specify that the consideration for the contract is:

(A) cash, payable either in lump sum or installments; or

(B) an insurance policy that is:

(i) newly issued in conjunction with and integral to the contract;

(ii) issued previously in a transaction separate and distinct from the contract; or

(iii) both.

If a contract is funded with an insurance policy, the ownership of the policy must be irrevocably assigned to a trustee, and the seller may not borrow against, pledge, withdraw, or impair the cash value of the policy;

(2) specify that only the purchaser, acting by written notice to the seller, may revoke the contract within thirty (30) days after the date the contract is signed by the purchaser and the seller and that the contract becomes irrevocable upon the expiration of the thirty (30) day period;

(3) specify that, if the contract is revoked, the seller shall refund and return to the purchaser, without interest, the cash or insurance policy used to fund the contract;

(4) specify that not more than thirty (30) days after the contract is signed by the purchaser and the seller, the whole of the cash or insurance policy serving as consideration for



the contract must be deposited into a trust or escrow authorized by subsection (c) or (d). However, a seller may elect to serve as trustee of a previously existing life insurance contract;

(5) except as provided in subsection (f), unconditionally require that the seller shall deliver all services or merchandise, or both, specified in the contract and receive as consideration for the delivery of services or merchandise, or both, only the cash or insurance policy held in trust or escrow without regard to the solvency of the insurer or the adequacy or loss in value of any cash deposit or insurance policy used to fund a contract;

(6) except as provided in subsection (f), prohibit a seller from imposing additional charges to recover any shortage or difference between the retail prices for services or merchandise, or both, in effect on the date of delivery of the services or merchandise, or both, and the value of the trust or escrow applicable to the contract on the date of delivery;

(7) require that a seller accepting the transfer of a contract permitted under section 13 of this chapter shall honor the requirements and obligations of the contract;

(8) permit the seller to assess a finance charge on a contract sold on an installment basis and require that the seller disclose to the purchaser the applicable requirements of federal and Indiana law;

(9) provide that the contract must comply with the following requirements:

(A) The contract must be made in a form that is:

- (i) written in clear and understandable language; and
- (ii) printed in a size and style of type that is easy to read.

(B) The contract must describe the services, merchandise, or cash advance items being purchased.

(C) The contract must identify the following by name, address, and telephone number:

- (i) The seller.
- (ii) The purchaser.
- (iii) The contract beneficiary if the beneficiary is an individual other than the purchaser.

(D) The contract must contain the seller's certificate of authority number and the date of the contract.

(E) The contract must provide that if an item of the particular services or merchandise specified in the contract



is unavailable at the time of delivery, the seller shall deliver services or merchandise similar in style, quality, and of equal value to the unavailable item in the place of the item.

(F) The contract must disclose the precise manner in which the contract is to be funded by:

- (i) identifying the consideration for the contract;
- (ii) identifying the name, number, if known, and issuer of any insurance policy used to fund the contract; and
- (iii) including the identity and location of the trustee or escrow agent who is to hold the trust or escrow.

(G) The contract must disclose that the seller reserves the right to assess an extra charge for:

- (i) transportation costs;
- (ii) services or merchandise incurred in the transport of human remains a distance greater than twenty-five (25) miles from the seller's place of business; and
- (iii) service charges necessarily incident to the transport of human remains and in excess of those service charges specified in the contract.

(H) The contract must disclose the following:

- (i) The amount, if any, the seller has elected to receive under subsection (c)(1) or subsection (d)(6).
- (ii) That a commission or fee may be paid to the seller or the seller's agent on a contract funded under subsection (b)(1)(B)(i).

(10) specify that a purchaser has the unrestricted right to designate one (1) or more successor sellers to whom the contract may be transferred under section 13 of this chapter, but that such a transfer is effective only with the consent of the newly designated seller and upon the fulfillment of the other requirements of section 13 of this chapter;

(11) specify that if cash advance items are funded in the contract, the seller agrees to deliver the cash advance items under one (1) of the following alternatives:

(A) Delivery is unconditionally guaranteed at the option of the seller.

(B) Delivery is conditionally guaranteed for a seller and will be equal in value to the total value of the trust or escrow account maintained for the purchaser multiplied by the percentage of the total original contract price represented by cash advance items;

(12) specify that a release from trust or escrow shall occur



only upon the seller's delivery of services or merchandise, or both;

(13) permit, at the option of the seller, the incorporation of the trust or escrow language contained in subsection (c) or (d) directly into the contract;

(14) prohibit the seller from charging any service, transaction, or other type of fee or charge unless the fee is:

(A) authorized under subsections (c)(1) and (d)(6) and section 27 of this chapter; or

(B) included within the definitions contained in section 8 or 11.5 of this chapter.

(c) A trust account authorized and established under this chapter must do all of the following:

(1) Be irrevocable and require either of the following:

(A) The seller deposit the insurance policy used to fund the contract into the trust account. However, for contracts funded after June 30, 1995, with a previously issued insurance policy, the seller may serve instead of a trustee if the seller is qualified to do so under section 11(c) of this chapter.

(B) The seller deposit the cash used to fund the contract into the trust account. However, as consideration for the sale of the contract and any expense incurred by the seller in conjunction with the sale of the contract, the contract must permit the seller to notify, within a ten (10) day period following the date the contract becomes irrevocable, the trustee of its election to receive only up to ten percent (10%) of the seller's original contract price for services or merchandise, or both.

(2) Designate the seller as the beneficiary of the trust.

(3) Designate a trustee qualified under this chapter and authorize the trustee to assess the charges authorized under section 18 of this chapter.

(4) Require that a separate account be maintained in the name of each purchaser.

(5) Require that any interest, dividend, or accumulation in the account be reinvested and added to the principal.

(6) Permit the assets of the several, separate accounts to be commingled for investment purposes.

(7) Require that on receipt of the seller's proof of delivery of services or merchandise the trustee shall remit to the seller the full amount in trust applicable to the purchaser's contract



and all of the accumulated interest.

(8) Permit the seller to retain the remaining amount if the amount in the trust account is greater than the seller's total current retail price of all services and merchandise subject to the contract at the time of delivery of all services or merchandise subject to the contract. However, in the case of a contract funded under subsection (b)(1)(B)(ii), the seller may not retain the remaining amount but must pay the remaining amount to the designated beneficiary. In the case of all other contracts funded under this chapter, the seller may opt to return the remaining amount to the individual designated by the purchaser to receive the remainder or to the purchaser's estate.

(d) An escrow account authorized and established under this chapter must do all of the following:

- (1) Be irrevocable and require that the seller deposit all cash or the insurance policy used to fund the contract into the escrow account.
- (2) Designate the seller as the recipient of the escrow funds.
- (3) Designate an escrow agent qualified under this chapter to act as escrow agent and authorize the escrow agent to assess the charges authorized under section 18 of this chapter.
- (4) Require that the escrow account be maintained in the name of the seller and serve as a depository for all cash or insurance policies used to fund contracts sold by the seller.
- (5) Permit the investment of and commingling of cash for investment purposes.
- (6) Permit the seller to receive an administrative or service fee at the option of the seller. The seller may opt to receive the fee after the day following the date the contract becomes irrevocable. The amount of the fee may not exceed ten percent (10%) of the seller's total contract price for services or merchandise or both.
- (7) Require that on delivery of services or merchandise, the escrow agent shall remit to the seller an amount equal to:
 - (A) the seller's original retail price as set forth in the contract for the services or merchandise delivered; minus
 - (B) the amount, if any, received by the seller under subdivision (6).
- (8) Permit the seller to receive monthly payments of the interest earned and the appreciation in the value of the escrow assets to the extent that the total value of the escrow after a



payment authorized under this subdivision is not less than:

- (A) the original contract value of all services or merchandise under the contracts, or parts of the contracts that remain undelivered; minus
- (B) the amounts, if any, received by the seller under subdivision (6).

(e) A trust account or an escrow account established under this section must contain a concise written description of all the provisions of this chapter that apply to the account.

(f) A seller's guarantee of delivery of all services or merchandise subject to a contract sold by the seller or transferred to a seller is unconditional except in the instance of one (1) of the following circumstances:

- (1) An installment contract funded with cash or an insurance policy issued in conjunction with the contract is guaranteed to the extent of the cash paid or death benefits available at the time of death of the individual for whom services or merchandise are to be provided.
- (2) A contract funded with an insurance policy issued previously and not in conjunction with the contract is guaranteed to the extent of the death benefit proceeds available at the time of the individual for whom services or merchandise are to be provided.
- (3) A contract funded with an insurance policy issued in conjunction with the contract, but having a limited or qualified death benefit period, is guaranteed to the extent of the death benefit proceeds available at the time of the death of the individual for whom services or merchandise are to be provided.
- (4) A transportation expense incurred by the seller while transporting human remains a distance greater than twenty-five (25) miles from the seller's place of business, plus any charge for services or merchandise necessarily incident to the transport of the human remains.
- (5) The seller agrees to conditionally guarantee the delivery of cash advance items under subsection (b)(11)(B).

In the instance of unguaranteed delivery, the seller may reduce the value or number of the services or merchandise subject to the contract or cash advance items delivered or deliver the services or merchandise in full on the condition that the seller receives adequate consideration to compensate the seller for the unguaranteed part of the contract.



(g) The entire value of an escrow or trust established under this chapter may not be considered as a resource in determining a person's eligibility for Medicaid under IC 12-15-2-17.

(h) This chapter does not prohibit a purchaser from immediately making the trust or escrow required under this chapter irrevocable and assigning ownership of an insurance policy used to fund a contract to obtain favorable consideration for Medicaid, Supplemental Security Income, or another public assistance program under federal or state law.

(i) A seller may not accept or deposit into a trust or escrow account cash, an insurance policy, or any other property as consideration for services or merchandise to be provided in the future except in conjunction with a contract authorized by this chapter.

SECTION 10. IC 30-2-13-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13. (a) Notwithstanding section 10 of this chapter, as used in this section, "seller" means an individual, **a person doing business as a sole proprietor**, a firm, a corporation, an association, **a limited liability company**, or a partnership:

(1) contracting to provide prepaid or at-need services or merchandise, or both, to a named individual; ~~or and~~

(2) holding a certificate of authority under this chapter.

~~(2) contracting to provide or sell both a contract and a funding mechanism to be used in conjunction with the purchase of prepaid or at-need services or merchandise.~~

(b) A purchaser has the option to designate one (1) or more successor sellers to provide:

(1) prepaid services or merchandise; or

(2) at-need services or merchandise.

A purchaser who exercises the purchaser's option to designate a successor seller shall give written notice of the designation to the ~~original~~ **currently designated** seller, successor seller, and trustee or escrow agent. **Only a purchaser may exercise the option to designate a new seller. However, the designation is ineffective unless the newly designated seller consents to the designation.**

(c) If a purchaser designates a successor seller, **and the successor seller consents to the designation**, not less than thirty (30) days after receiving notice under subsection (b), the seller who was previously designated shall:

(1) relinquish **and transfer** all rights under the contract;

(2) transfer to the successor the contract; and



(3) release from trust **or escrow for subsequent deposit to the successor seller's trust or escrow** all property being held as consideration for the contract, **together with an itemized statement disclosing all services or merchandise delivered as of the date of transfer.**

The seller and the successor sellers shall cooperate to ensure that there is no forfeiture or loss of a right or benefit under the contract and that all contract terms are fulfilled. Except for out-of-state transfers, the seller who was previously designated may elect to charge a successor seller a transfer fee not to exceed five percent (5%) of the previously designated seller's contract price. If similar prepaid or at-need services or merchandise are purchased from one (1) or more sellers, the contract that is first in time prevails and is valid.

(d) The trustee shall confirm the transfer to the seller, successor seller, and purchaser by written notice confirming the identity and value of the property transferred.

(e) It is a violation of this chapter for a seller to knowingly induce a purchaser to breach an existing contract that provides for prepaid or at-need services or merchandise.

(f) This section does not abrogate the requirements of IC 25-15-4 concerning contracting for or delivering at-need services and merchandise.

(g) It is a violation of this chapter for a seller to knowingly:

(1) induce a purchaser who has the right to designate a successor seller under subsection (b) to:

(A) make a designation of a successor seller;

(B) breach an existing contract for prepaid or at-need services or merchandise; or

(C) enter into an at-need or prepaid contract calling for the delivery of similar services or merchandise; or

(2) offer a monetary inducement or the exchange or substitution of free or discounted services or merchandise in an effort to induce a purchaser to effect a change in the designation of a seller of prepaid or at-need services or merchandise.

(h) It is a violation of this chapter for a seller to provide free or discounted burial rights:

(1) as an inducement or as consideration for the transfer of a contract; or

(2) in an effort to induce a purchaser to effect a change in the designation of a seller of prepaid or at-need services or merchandise.

SECTION 11. IC 30-2-13-14 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 14. (a) A trust or an escrow agreement created under:

- (1) IC 23-14-49-1;
- (2) IC 30-2-9; or
- (3) IC 30-2-10;

may not be converted to a trust or an escrow agreement required by section 12 **or 12.5** of this chapter.

(b) A contract that has been funded with cash may not subsequently be changed to be funded with **an** insurance **policy**.

(c) A contract that has been funded with **an** insurance **policy** may not subsequently be changed to be funded with cash.

(d) **Unless a transaction occurs under section 15(a)(4) of this chapter or the provisions of the contract permit otherwise, a new or successor trustee or escrow agent may not qualify and serve as trustee or escrow agent without the written consent of the purchaser and the seller designated to provide services or merchandise subject to a contract under this chapter.**

SECTION 12. IC 30-2-13-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15. (a) If a seller:

- (1) ceases to have a certificate of authority or loses a professional license required to provide services under this chapter;
- (2) ceases to exist or operate;
- (3) is incapable of performing the seller's obligations under an unperformed contract for any reason; or
- (4) sells or leases the seller's business, facilities, or assets;

the seller shall give notice to the board and to each purchaser for whom funds are held in a trust **or escrow** under this chapter. **The notice shall specify the reason for the issuance of the notice.**

(b) The seller's written notice under subsection (a) must be:

- (1) addressed to the purchaser's last known address; and
- (2) mailed within fifteen (15) days after the seller becomes incapable of performing the obligations under the contract.

(c) A purchaser who receives a notice under subsection (a) has thirty (30) days after the date the notice was mailed by the seller to select and designate a new seller **under section 13 of this chapter** to become the beneficiary of the trust **or the designated recipient of the escrow funds**. The first seller shall send written notice of the designation of a new seller to the newly designated seller or to the trustee.

(d) A seller shall transfer all unperformed contracts and funds held in trust or escrow under this chapter to the seller who is the successor owner or lessee of the transferring seller. The successor seller shall perform all contracts transferred under this subsection.



(e) If a purchaser fails to designate a new seller, the designation shall be made by the board.

SECTION 13. IC 30-2-13-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16. (a) Except for sales of stock or merchandise in the ordinary course of the seller's business, a seller who has deposited money or an insurance policy ~~in trust~~ under **section 12 or 12.5** of this chapter may not:

- (1) sell, consolidate, merge, or dispose of assets; or
- (2) lease the seller's business, facilities, or assets;

without providing, as an integral part of the transaction or occurrence, for the designation of a successor seller of the money or insurance policy placed in trust. **For purposes of this section, a change in control determines the seller's obligation.**

(b) If a seller acting as a trustee of an insurance policy fails to designate a qualified successor seller, the board shall make the designation. However, the designated successor must be willing to accept the designation.

(c) This section does not restrict a purchaser's right to designate a new seller in accordance with section 13 of this chapter.

SECTION 14. IC 30-2-13-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 18. A trustee ~~who administers a trust that is funded by a deposit of money or an escrow agent~~ may be reimbursed for necessary expenses and be paid reasonable compensation for those services from the trust ~~or escrow~~. **A trustee or an escrow agent shall also be permitted to withdraw from trust or escrow any federal or state tax liability assessed against the purchasers' interest in the trust or escrow.**

SECTION 15. IC 30-2-13-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 20. If an agent and a purchaser execute a contract covering funeral services (as defined in IC 25-15), the contract is valid only if the contract is ratified by a funeral director licensed under IC 25-15 who is directly affiliated with the seller as an agent when the contract is made. **A contract ratified by an unaffiliated licensed funeral director is void.**

SECTION 16. IC 30-2-13-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 27. Each seller of a prepaid contract under this chapter shall pay to the board **on a form provided by it** not later than March 1 of each year from money not deposited in a trust ~~or escrow~~ the following amounts for each contract written during the preceding calendar year:

- (1) Two dollars and fifty cents (\$2.50) for each contract having a ~~total purchase price of less than one thousand dollars (\$1,000):~~

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value of less than five hundred dollars (\$500).

(2) Five dollars (\$5) for each contract having a ~~total purchase price of at least one thousand dollars (\$1,000)~~; **value of at least five hundred dollars (\$500) and less than one thousand five hundred dollars (\$1,500).**

(3) Ten dollars (\$10) for each contract having a value of one thousand five hundred dollars (\$1,500) or more.

However, no fee is due and payable on contracts funded with a previously issued life insurance policy. The payment may be charged to the purchaser or, at the option of the seller, paid by the seller. A trustee shall quarterly report to the board all payments received by the trustee from all sellers during the preceding quarter. The report must identify the name and address of each seller from whom the trustee received payments and the total amount of the payments. The payments are administered under section 28 of this chapter.

SECTION 17. IC 30-2-13-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 29. (a) Money in the fund may be used to provide restitution **to a seller who performs a defaulted contract**, to a purchaser, or to a purchaser's estate for pecuniary loss arising from a trust or an escrow required by:

- (1) this chapter;
- (2) IC 23-14-49-1;
- (3) IC 30-2-9; or
- (4) IC 30-2-10.

The repeal of a statute cited in this subsection does not terminate the ability of a party to a contract made under the repealed statute to receive restitution under this chapter.

(b) The purchaser, **seller**, or other interested person must request restitution by filing a verified complaint with the board.

(c) The board may investigate any verified complaint. Within sixty (60) days after a verified complaint is filed, the board shall determine if a seller has defaulted on a contract. If the seller's obligation to perform under the contract cannot be collected from the seller, the board shall order the auditor of state to make restitution from the fund.

(d) The amount of restitution may not exceed the gross amount of the original contract plus interest, compounded annually, on the gross amount that is figured, for each year or part of a year for which restitution is owed, using the lesser of:

- (1) the rate set forth in IC 24-4.6-1-101 in effect on January 1 of each year; or
- (2) the monthly average yield on United States Treasury

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Securities for the month of January of each year, adjusted to a constant maturity of one (1) year, as published by the Federal Reserve.

The fund may not be charged with court costs or the payment of legal or other fees. In computing the amount of restitution, the board shall give credit for:

- (1) merchandise delivered; and
- (2) resources still existing in trust.

(e) When restitution is paid from the fund, the fund is subrogated to the amount of the restitution, and the board shall ask the attorney general to take all reasonable steps to collect the subrogated amount from the seller. Any amount collected shall be deposited in the fund.

(f) Money in the fund may only be used for a purpose that is specified in this section.

(g) The payment of restitution from the fund is not a right, and a purchaser does not have a vested right in the fund as a beneficiary of the fund.

(h) The status of the fund shall be annually reviewed by the board. If the board determines during its annual review that the fund balance equals or exceeds one million **five hundred thousand** dollars (~~(\$1,000,000)~~ **(\$1,500,000)**), the board shall suspend payments to the fund until after the next annual review that the board determines that the fund balance is less than one million **five hundred thousand** dollars (~~(\$1,000,000)~~ **(\$1,500,000)**).

SECTION 18. IC 30-2-13-36 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 36. The board may suspend the certificate of authority of a seller who violates a provision of this chapter. **The board may suspend the certificate of authority of a seller who intentionally violates section 12.5 of this chapter for at least one (1) year. The board may assess a seller a fine of not more than ten thousand dollars (\$10,000) for each violation of section 12.5, 13, 15, 21, 23, 24, or 25 of this chapter to be added to the fund established under section 28 of this chapter.**

SECTION 19. IC 30-2-13-38 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 38. (a) **A seller who violates a provision of this chapter commits an uncured deceptive act (as defined in IC 24-5-0.5-2).**

(b) **A person doing business as a sole proprietor, a firm, a limited liability company, a corporation, an association, or a partnership, but not acting as a seller that:**

- (1) **sells or advertises prepaid services or merchandise or**



services or merchandise (as defined in section 8 of this chapter) and fails to obtain the certificate of authority required by section 33 of this chapter; or

(2) sells or advertises prepaid services or merchandise or services or merchandise (as defined in section 8 of this chapter) after the entity's certificate of authority has:

(A) expired; or

(B) been rescinded, revoked, or suspended by the board;

commits a Class A misdemeanor. Each act committed in violation of this subsection constitutes a separate offense.

(c) The following may maintain an action to enjoin an individual or entity from continuing to violate this section:

(1) The board.

(2) The attorney general.

(3) The prosecuting attorney of a county in which a violation occurs.

(d) A purchaser has a private right of action against a seller who commits an uncured deceptive act.

